

(1981) 11 DEL CK 0027

In the Delhi High Court

Case No : Letter Patent Appeal No. 271 of 1972

Sohan Lal Taneja, etc.

APPELLANT

Vs

Delhi Administration, etc.

RESPONDENT

Date of Decision : 06-11-1981

Acts Referred:

Citation : (1982) 21 DLT 32 : (1983) 2 ILR Delhi 610 : (1982) LabIC 1018

Hon'ble Judges : Rajinder Sachar, J;M.L. Jain, J

Bench : Division Bench

Advocate : G.D. Gupta, Anita Sachdeva, Y.K. Sabharwal, Mukul Rohatagi and M.M. Sudan, for the Appellant;

Judgement

Sachar, J.

(1) This appeal is against the decision of the learned single Judge by which he rejected the challenge to the validity of the Delhi Administration Subordinate Ministerial/Executive Service Rules, 1967 (hereinafter to be called the 1967 Rules) published on 10-2-1967. The Delhi Administration like any other State Administration has large number of services under it. Each service was governed by its own respective rules. One of the departments to which the appellants belong is the Directorate of Social Welfare. The appellants I to 14 are Probation Officers Grade II/Case Workers. Appellants 15 to 17 are working as Inspectors, "Deputy Superintendents, Supervisors-cum-Probation Officers, Grade I and appellant No. 18 & 19 are working as Superintendent Institution and Superintendent training-cum-Probation Centre at the time when the writ petition was filed.

(2) The Directorate of Social Welfare has its own service rules for recruitment to the posts in the said department. Earlier to 1967 there were no unified cadre of employees of Delhi Administration and persons were recruited to different services under different set of recruitment rules governing those services. However on 10th February, 1967 the Administrator, Delhi, in exercise of the

powers under Article 309 of the Constitution framed 1967 Rules. Rule 3 of the Rules lays down that on and from the date of commencement of these rules there were to be constituted two Central Civil Services to- be known as the Subordinate Ministerial Service and the Subordinate Executive Service of Delhi Administration. The service was to have four grades namely Grade I, Grade II, Grade III and Grade IV. By Rule 4 the authorised strength of 4 grades of service in each cadre was as provided in Schedule, 1. Rule 5 further provide that the Chief Secretary may at the commencement, of these Rules appoint to the service any person who on such commencement or at the time of temporary addition to posts holds any of the posts specified in Schedule II or a temporary posts so added in a regular manner in accordance with the method of recruitment prior to the constitution of service, subject to the availability of duty posts in the grade on the recommendation of selection board constituted for the purpose. We may note that though 1967 Rules have also constituted Subordinate Ministerial Service, the virus of that not the subject matter of this appeal because so far as the ministerial posts in the Directorate of Social Welfare is concerned namely Deputy Superintendents, Upper Division Clerks, Steno-typist etc. have" been held to be ministerial service and have, been included in "the Subordinate Ministerial Service. We. are only concerned with the virus of Subordinate Executive Service. A reference to Schedule 1 & 2 of 1967 Rules .will show that the posts which had been included in the new service and the personnel out of which those posts can be filled at the initial constitution and later on are to the various posts like the Civil Supplies Officer, Assistant Sales Tax Officer, Tehsildar, Assistant-Employment Officer, Assistant Labour Officer in Grade I and Senior Inspector. Assistant Manager, emporium. Industrial "Inspector .and Panchayat Inspector in Grade II. It is not necessary to mention all the posts because the arguments have been addressed on a broader aspect. The grievance in short put forth by Mr. Gupta, the learned counsel for the appellant is that- the qualifications and nature of duties performed by a member of those who have now been included in Schedule 1 & 2 are identically the same as those held by the appellants" and, Therefore there is no rational or conceivably logical reason not to have included the posts held by the appellants also in Schedule 1 & 2. The respondents have sought justification in excluding the posts held by the appellants from 1967 Rules by pleading that these are technical posts" and require special aptitude and qualifications and that it would not have been conducive to the service if those posts were also included because every person who had been included in 1967 could not have been asked to work on " the posts held by the appellants "and, Therefore, the principle of inter change ability, which was the reason for Constituting a new service would have been defeated. The learned Judge came to the conclusion that the Directorate "of Social Welfare is a technical department and its officers have to perform manifold duties such. as child welfare, Juvenile delinquency, women welfare, social and moral hygiene, beggar problem and the nature of their duties required them to have special knowledge, training, and experience; he has on a comparison of qualifications prescribed for the various posts mentioned in Schedule I to the

1967 Rules -and the qualifications prescribed for posts of the Directorate of Social Welfare taken the view that they are different, the later posts being specialised ones and that a merger of the Directorate of Social Welfare within the fold of; . the Executive Service constituted under impugned 1967. Rules. would not be conducive to the interest of that service.He, Therefore, found no violation of the equality clause "under Article 14 & 16 as was urged by the appellants and thereupon dismissed the writ petition. Hence the present appeal.

(3) Mr Gupta the learned counsel for the appellant in the forefront challenged the finding of the learned single Judge that the qualifications or. the nature of "duties performed in the posts held by the appellants and by those included in the unified service included in Schedule I to the 1967 Rules .are so different as to justify the exclusion. of the posts of the appellants from 1967 Rules. In this connection he special drew our attendon to the comparative study of nature of .duties and qualifications of different posts, as against .the posts held by the appellant as given in annexure F. to the petition. Mr. Gupta emphasised the inclusion of some of the posts in the Labour Department like Assistant Labour Officer .and Welfare Officer and compared them to the posts of Superintendent and Planning Officer in the Directorate of Social Welfare, and the fact that all these posts require a common qualification, .namely degree in social science. Certain other posts like Panchayat Officer, Assistant Employment Officer which also require "the educational qualifications of a Degree of recognised University in Economics or. Commerce are also highlighted. Of course so far as the work qualification is concerned they are different in the sense that the person who is to be recruited in social welfare department has to have experience of work in social work while a person in Labour Department is required to have experience in the Labour Welfare work. Special mention is made by Mr. Gupta to the inclusion of posts of Naib. Tehsildar in the grade of 150 300 in Schedule Ii to 1967 Rules resulting in his being eligible for being promoted to the post of an Executive in Grade I in the .pay-scale of 350 575 and thus being eligible to hold even the post of Assistant Employment Officer Class Ii or a Grade I Assistant Sales Tax Officer or a Grade I Inspector Weights and Measures.This is emphasised by Mr. Gupta to urge that if a person with the qualifications of a Naib Tehsildar is considered fit and proper for promotion to the posts included in 1967 Rules what justification is there that the appellants who are having a Graduate degree (the Same requirement for recruitment to the post of Assistant Employment Officer or Assistant Sales Tax Officer) should not have been included in the service. This, it is claimed, makes available to the persons holding posts under 1967 Rules much larger avenues of promotion and opportunities in the higher posts under Delhi Administration than to the appellants, which action is said to be discriminatory and denial of equal opportunity guaranteed under the Constitution. Apart from the original affidavit in "return filed by the. respondents a further detailed affidavit was filed in reply to the Appellants" rejoinder by Mrs. Reva Nayyar, the then Under Secretary (Services) to justify the constitution of a new service and the exclusion of the posts held by the appellents This new cadre

was said to have been constituted on similar lines as Indian Administrative Service and Pcs Cadres so that officers appointed to the cadre can be posted against posts included in the cadre. The reason why the posts in Directorate of Social Welfare had not been included was said to be that they had specialised qualifications which could not fit in .with the general scheme of constitution with the Subordinate service, and that the posts held by the appellants if included in the cadre would be. difficult "to be manned by the other cadre officers and the whole purpose of a.unified service would be defeated. It was also denied that the appellants did not have adequate chances of promotions- or that their chances of promotion are less than the officials included in the cadre. A statement seeking to justify" the promotions obtained by the appellants at various points of time were also attached with the retuna affidavit The-question, of grouping various posts on the executive side of different grades of subordinate service were said to have been. considered thoroughly and it was only after matured thinking by Delhi Administration that the Cadre was constituted. A. list was given of other departments which had also not been included in the 1967 service. A reference to R-6- attached with the said affidavit will. show that large number of -posts like Soil Conservation Assistant Development Department in which requirement is adegree of agriculture of Assistant Supervisor Fisheries for "which the qualification is only a metriculate or a Compilation Assistant or computer for which the qualification is degree in economics or mathematics or Statistical Inspector, that is as many as 20 types of posts mentioned therein have not been included."in the unified service "under the 1967 Rules. Though the appellants in the first instance emphasise the similarity arid identity of work performed by them and by those included in the 1967 Service.but in substance the real complaint is that if various posts like Assistant Sales.Tax Officer Labour Welfare Officer, Weights arid Measure Inspector and Naib Tehsildar who broadly are expected to be doing different kinds of jobs can be included in the unified service, there is no rational reason to exclude the appellants because, tics nature of their work is not so distinct or specialised or technical that it could not be performed by other members of unified service. In our view the extreme stand taken by both the appellant and the respondents is unacceptable. The plea of the appellants that there is no difference between the work performed by the appellants and of those posts which have been included in the Schedule under 1967 Rules is obviously without any merit because we cannot accept that the kind of work done by a person like a social welfare officer in the Directorate of Social Welfare is the same kind of work as done by an. Assistant Sales Tax Officer or an Inspector, Weights & Measures or a Panchayat Officer. There is apparently no similarity of , course in the sense of a possession of common educational qualification, a minimum of common sense and knowledge of administrative procedures, may be common features" but then these are traits which would be common attributes of almost all the services anywhere.. "The argument of equating these posts of the appellants with the posts included in the 1967 Rules is based on too enuous and shaky foundation. Similarly the contention of the respondents that the work performed by the appellants is so

different from those posts which have been included in Schedule I is partially correct, it may be acceptable only to the extent .that there is a difference of nature of duties performed on these posts. But from that the further jump that inclusion of posts in Schedule I of 1967 Rules can be justified solely by a community of interest or qualification and nature of duties inter se as distinctly as -against the posts held by the appellants is also similarly a tenuous contention. If notwithstanding the differences in the nature of duties performed by an Assistant Sales Tax Officer, Naib Tahsildar and Labour Welfare Officer, these posts can be combined into one service, it is not prima facie an impermissible and an absurd suggestion urged by the appellants that for similar reason the posts held by appellants, could also have been included in the unified service Under 1967 Rules. But we must hasten to add that though it may not be correct to say that the work of the posts, say like the Assistant Labour Welfare Officer and the Research Assistant could possibly be done by the appellants and vice versa it does not automatically make the classification unreasonable and arbitrary because as is well settled "The State is legitimately empowered to frame rules of classification for securing the requisite standard of efficiency in services and the classification need not be scientifically perfect or logically complete. In applying the wide language of Arts. 14 and 16 to concrete cases a doctrinaire approach should be avoided and the matter considered in a practical way, of course without whittling down the equality clauses". See (1970 SLR 755) Gangs Ram V. Union of India (1).

(4) That the work performed by the appellants is- no doubt somewhat distinct from the general run of work which is to be performed by the posts included in the 1967 Rules cannot also be ignored. In these matters the courts are concerned with the reasonableness .of the classification, not with the precise accuracy of the decision to classify not with the question whether the classification is scientific. Such tests have long", since been discarded. In fact American decisions have gone as far as saying that classification would offend against the 14th amendment of the American Constitution only if it is "purely arbitrary, oppressive or capricious" and the inequity produced in order to encounter the challenge of the Constitution must be "actually and palpably unreasonably and, arbitrary". See The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others, . We, however, do not propose to make any exercise of comparison of the respective nature of duties performed by the appellants as against those posts included in 1967 Rules, for the obvious reason that this argument .is founded on some assumptions which are both nonexistant and have no warrant in law. It is evident that a first basic postulate of the appellants' argument is that it can compel the State to have a common cadre if it is able to show a fair amount of similarity between various services. And the further assumption is that even if there be separate service of the appellant . from that of 1967 service plea of violation of equity clause in the Constitution is available on the ground that chances of promotion and availability of posts under 1967 Rules is more advantageous than to the appellants. We find both these

assumptions legally untenable. In our view how many different classes of services a State Administration should have and which should be kept separate are matters preeminently for the administration to determine and the court is ill-equipped to enter into this realm because this matter would require experiments by trial and error and unless there is any legal or constitutional inhibition the State must be left free to find the best synthesis, and that is why it has been said "it is open to the "State Government to constitute as many cadres as they choose according to administrative convenience and expediency". See [1974 (1) SLR 495 C. P. Damodaran V. State of Kerala (2).

(5) In this connection we had asked Mr. Gupta pointedly whether if 1967 Rules had not been framed the appellants could have compelled the Delhi Administration to constitute a unified service as it has now been done by 1967 Rules on the ground that as the duties performed by the appellants and those performed in the other services are the same there should be one unified cadre of service because the chances of promotion of the appellants in the unified cadre would be much more than they would be if a separate department of Social Welfare was kept in tact. Mr. Gupta fairly conceded that it would not have been open to the appellants to have asked for a mandamus or claim any right that all the services under a State having some kind of similarity should be consolidated into one unified service if Delhi Administration was not so minded to do so. But he nevertheless insists that once the Delhi Administration chose to constitute the unified service Article 16 which guarantees equality of opportunities in matters of public employment become attracted and the appellants can claim that unless the Delhi Administration is able to justify that "there, were rational- reasons ill relation to the object for creation of a unified service under 1967. Rules to exclude the appellants. from that service the said exclusion would suffer from the infirmity of being hit by Article 16. We cannot agree. We do not appreciate how and by what process of reasoning if the appellants could not have insisted that Delhi Administration should constitute a new unified service including the appellant's, a greater right has now accrued to them when a new service under the Delhi Administration has. been constituted under 1967 Rules. To concede this right is to concede a right to any service to force a unification of different services on the State administration, a proposition which even Mr. Gupta was not willing to put forth, for the simple reason-that it is distinctive of the Undoubted right of the Administration to constitute any number of distinct services. The mere fact that some .services .are unified does not give any right to "a distinct service like .the appellant's a gateway to enter that unified service. The Directorate of Social Welfare continues to be a distinct and separate service and any complaint of inequality must be shown within that service atone and not by comparing .similar with dissimilar service, Which a service under 1967 Rules is. This plea is in no way different from the plea which would have to be raised by them when asking- to constitute a unified service . which admittedly is not available.

(6) It is to be noted that the plea of inequality that is raised by the appellants is

not with regard to. any inequality within the service in Directorate of Social Welfare. It is not their grievance that some posts in the Delhi Social Welfare" Directorate are eligible to be included in Schedule I while the posts held by the appellants are not so eligible. They do not make any grievance of any unequal preferences within the Social Welfare Directorate. No discrimination is even suggested within the appellant's service. Discrimination is alleged only by seeking to compare the service conditions, prospects" and other requirements of 1967 service with that of appellant's service. This argument is unfortunately a mere hope of sand, and no claim, can be founded on it. So multifarious are the activities of the State that employment of men for the purpose of these activities has by the very nature of things to be in different departments of the State and inside each department, in many different classes, "Each such class can be reasonably considered to be a separate .and in many matters independent entity with its own rules of recruitment, pay and prospects and other conditions of service which may vary considerably, between one class and another..... It is clear that as between the members of the same class the question whether conditions of service are the same or not may well arise. If they are not the question of denial of equal opportunity will require serious consideration in such cases. Does the concept of equal opportunity in matters of employment apply, however, to variations in provisions as between members of different classes, of employees under the "State? .In our opinion, the answer must be in the negative". See All India Station Masters" and Assistant Station Masters" Association, Delhi and Others Vs. General Manager, Central Railway and Others, . As "between citizens holding post in different grades in government service there can be no question of equality of opportunity. It is fantastic to suppose that Article 16 of the Constitution forbids the creation of different , grades in the government service; that is what the petitioner's argument amounts to". See Kishori Mohanlal Bakshi Vs. Union of India, . Complaint about the creation of separate cadres or integration or otherwise of different cadres cannot call in aid of Article 16 for as stated by the Supreme Court in 1976 (2) SLR 774 Reserve Bank of India V. M. C.Paliwal (5), while repelling .the constitutional challenge, to the integration of the non-clerical service into clerical service as follows:

"We fail to see how integration of different cadres into one cadre can be said to involve any violation of the equality clause. It is now well settled, as a result of the decision of this court in Kishori Mohan Lal V. Union of India, that Article 16 and a portion also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause".

Similarly the argument that if there is equality in work there have to be equal conditions of service is unsound and if for instance, an existing service is

recruited on the basis of a certain qualification, the creation of another service for doing the same work, it might be in the same way but with better prospects of promotion cannot be said to be . unconstitutional, and the fact that the rules framed permit free transfers of personnel" of the two groups to places held by the other would not make any difference. We are not basing this answer on any theory that if a government servant enters into any contract regulating the conditions of his service he cannot call in aid the constitutional guarantees because he is bound by his contract. But this conclusion rests on different and wider public grounds, viz., that the government which is carrying on the administration has necessarily to have a choice in the constitution of the services to man the administration and that the limitations imposed by the constitution are not such as to preclude the creation of such services. See *State of Punjab Vs. Joginder Singh*, 7. We may note that one of the reasons mentioned by Mr. Gupta which according to the counsel has created a great deal of resentment to the appellants was that the Dhani Service Rules provide as one source for recruitment from the executive Grade I constituted under 1967 Rules, and as appellants are not eligible to be considered for executive Grade I posts in 1967 Rules they could never hope to be included in Dhani Rules and thus their chances of promotions were seriously curtailed. But this aspect has no relevance to the issue of 1967 Rules. This aspect may or may not have relevance if the issue of Dhani Rules had been challenged before us. But as Dhani Rules are not the subject matter in this writ petition it will not be proper for us to make any observation with regard to that aspect and the grievance on this score, Therefore, falls outside the ambit of these proceedings. It thus is beyond doubt that constitution of separate cadres or merging different cadres into one cadre is a matter entirely for the administration and is a matter of State Policy and to invoke the violation of equality clause is inappropriate and impermissible. Each cadre is a separate cadre and the equality clause cannot be invoked to compel the government to include appellants into unified cadres for the only reason that because some other cadres have been merged into one under 1967 Rules. We have mentioned above that respondents have given some reasons to show as to why it thought that the post which had been unified under 1967 Rules are more akin and more similar than the posts which are held by the appellants. According to the respondents it was on a consideration of various aspects that they kept the appellant's posts outside the purview of 1967 Rules. Mr. Gupta however, contends that once Delhi Administration decides to merge some posts it must inevitably follow that unless a justification can be given to exclude any posts from the purview of 1967 Rules the action would be *ultra vires*. This argument of all or none is unsound and was also rejected by the Supreme Court in *The State of Jammu and Kashmir Vs. Shri Triloki Nath Khosa and Others*, . In that case the challenge was made to the Rule which required that a degree qualification was necessary as a condition for promotion to the post of an Executive Engineer but there was no rule requiring a similar qualification for promotion to the post of Superintending Engineer. The argument was that if the true object was the higher administrative efficiency the same could not be achieved by merely

prescribing a degree qualification for the post of an Executive Engineer while the same was not provided for the higher posts of Superintending Engineer and Chief Engineer. Rejecting this argument the Supreme Court observed : Para 37 :

"THIS argument means that any service reform must embrace every hierarchy or none at all. It is often impossible or at any rate inexpedient to reach and remedy all forms of evil, wherever present. Reform must begin somewhere if it has to begin at all and, Therefore, the administrator who has nice and complex problems to solve must be allowed the freedom to proceed tentatively, step by step. Justice Holmes gave in a similar context a significant warning that : "We must remember that the machinery of Government would not work if it were not allowed a little play in its joints".

(8) Mr. Gupta referred us to 1972 (7) SLR 914 Bishan Chand v. M. Corpn. of Delhi (8). But that case is clearly distinguishable because there it was found that a graduate allowance was payable to L.D.C.s but as some of the writ petitioners whose cases were not distinguishable were not paid, a direction was given to that effect. The posts held by the appellants and the posts of services included in 1967 rules were different service and governed by different set of rules. It is no body's case that any privilege or any facilities have been given to any persons similarly situate in the Directorate of Social Welfare which has been denied to the appellant. What they are seeking is the so-called equality with another service which are now a part of the 1967 Service. They are seeking to enter the portals of 1967 service. There can be no question of claiming equality with a different and distinct service because each service is a separate one and equality must be claimed within the service itself, because as it is well established that if they were distinct services, there was no question of inter se seniority between members of the two services, nor of any comparison between the two in the matter of promotion for founding an argument based upon Article 14 or Article 16(1). See Air India's case (supra). We must also remember that where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the Rules offend Article 14 the burden is on him to plead and prove the infirmity. There is always a presumption in favor of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A rule cannot be struck down as discriminatory on any a priori reasoning. See Triloki Nath's case (supra) (para 18).

(9) As a result we are not satisfied that the 1967 Rules are in any way ultravires and violate Article 14 or 16 of the Constitution. We would, Therefore, uphold the judgment of the learned single judge though on somewhat different reasoning than the one adopted by him. The appeal is hereby dismissed. In the circumstances there will be no order as to costs.